

AMENDED AND RESTATED OPERATING AGREEMENT/
JOINT POWERS AGREEMENT

FOR

EDDY-LEA ENERGY ALLIANCE LLC

THIS AMENDED AND RESTATED OPERATING AGREEMENT/JOINT POWERS AGREEMENT FOR EDDY-LEA ENERGY ALLIANCE LLC (this "Agreement") is made and entered into as of the _____ day of _____, 2013, by and among Eddy County, New Mexico, Lea County, New Mexico, the City of Carlsbad, New Mexico, and the City of Hobbs, New Mexico (the "Members"). This Agreement amends and replaces in its entirety the Operating Agreement/Joint Powers Agreement entered into as of November 7, 2006 among the Members.

Recitals

A. This Agreement is both an "agreement", as that term is defined in the JPA Act (defined below), and an "operating agreement", as that term is defined in the LLC Act (defined below).

B. The purpose of the Eddy-Lea Energy Alliance LLC (the "Alliance") is to promote and assist energy-related economic development in Eddy and Lea Counties (including, without limitation, by conveyance of land, buildings and infrastructure under the LED Act (defined below)). In particular, it is contemplated that the Alliance will investigate the feasibility of and negotiate a transaction (the "Venture") under which the Project Site (defined below) will be leased or sold to one or more private companies ("Venture Party") for development and use as energy-related economic development project and related activities (the "Project").

Agreement

ARTICLE I.
DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below. (All capitalized terms used in this Agreement that are not defined in this Article I shall have the meanings set forth elsewhere in this Agreement.)

1.1. "Agreement" means this Amended and Restated Operating Agreement/Joint Powers Agreement, as originally executed and as amended and restated from time to time.

1.2. "Alliance" means the Eddy-Lea Energy Alliance LLC.

1.3. "Annual Budget" has the meaning set forth in Section 4.9.

1.4. "Articles of Organization" means the Articles of Organization of the Alliance, filed with the New Mexico Public Regulation Commission, Corporations Bureau, on August 23, 2006, as

amended and restated from time to time.

- 1.5. "Chairperson" means the Officer having duties as described in Section 6.5.3.
- 1.6. "Contribution" means an amount of funds paid, or the fair market value of property contributed, to the Alliance by any Member, in accordance with the provisions of Article IV.
- 1.7. "DFA" means the New Mexico Department of Finance and Administration.
- 1.8. "Director" means a member of the Governing Board.
- 1.9. "Effective Date" has the meaning set forth in Section 10.14.
- 1.10. "Fiscal Agent" means a Member that performs, under the general direction of the Governing Board, the budgetary and financial control requirements applicable under state law to the Alliance as a quasi-governmental agency, including the requirements of DFA and the State Auditor.
- 1.11. "Fiscal Year" means the Alliance's fiscal year, which shall begin on July 1 and end on June 30 of each year.
- 1.12. "Governing Board" means the governing board of the Alliance, as more specifically described in Article VI and elsewhere in this Agreement.
- 1.13. "JPA Act" means the New Mexico Joint Powers Agreements Act, Ch. 11, Art. 1 NMSA 1978 Comp.
- 1.14. "LED Act" means the Local Economic Development Act, Ch. 5, Art. 10 NMSA 1978 Comp.
- 1.15. "LLC Act" means the New Mexico Limited Liability Company Act, Ch. 53, Art. 19 NMSA 1978 Comp.
- 1.16. "Majority Vote" means the affirmative vote of Directors representing a Majority Interest.
- 1.17. "Majority Interest" means more than 50 percent of the total Percentage Interests.
- 1.18. "Member" means any of Eddy County, New Mexico, Lea County, New Mexico, the City of Carlsbad, New Mexico, and the City of Hobbs, New Mexico, or any other municipality or county that becomes both a member (within the meaning of the LLC Act) of the Alliance and a party to this Agreement under the authority of the JPA Act.
- 1.19. "Membership Interest" means a Member's entire interest in the Alliance as provided in this Agreement, including the right to distributions (if any), the right to appoint Directors and to vote on matters reserved to the Members, and the right to receive information concerning the business and affairs of the Alliance.

- 1.20. "Officer" means an officer of the Alliance.
- 1.21. "Open Meetings Act" means Ch. 10, Art. 15, NMSA 1978 Comp.
- 1.22. "Percentage Interest" means the percentage interest of a Member set forth opposite the name of such Member under the column "Member's Percentage Interest" in Exhibit A hereto, as determined in accordance with the provisions of this Agreement and as may be adjusted from time to time pursuant to the terms of this Agreement. The sum of the aggregate Percentage Interests of the Members shall at all times equal 100 percent.
- 1.23. "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.
- 1.24. "Primary Director" means, of the two Directors appointed by each Member pursuant to Section 6.2.2, the Director that is an elected official of the Member, or, if both Directors are elected officials of the Member, the Director that has the longest tenure in his or her current elected position, or, if both Directors have the same tenure in their current elected positions, the Director whose birthdate is closest to the date of the meeting at which a vote of the Governing Board is being held.
- 1.25. "Procurement Code" means the New Mexico Procurement Code, §§13-1-28 et seq., NMSA 1978 Comp.
- 1.26. "Project" has the meaning assigned in Recital B.
- 1.27. "Project Site" means the real property, located in Lea County and more specifically described in Exhibit B, that is owned by the Alliance.
- 1.28. "Secondary Director" means, of the two Directors appointed by each Member pursuant to Section 6.2.2, the Director that is not the Primary Director.
- 1.29. "Secretary" means the Officer having duties as described in Section 6.5.5.
- 1.30. "Tort Claims Act" means the New Mexico Tort Claims Act, §§ 41-4-1 et seq., NMSA 1978 Comp.
- 1.31. "Treasurer" means the Officer having duties as described in Section 6.5.6.
- 1.32. "Venture" has the meaning assigned in Recital B.
- 1.33. "Venture Party" has the meaning assigned in Recital B.
- 1.34. "Vice-Chairperson" means the Officer having duties as described in Section 6.5.4.

**ARTICLE II.
LEGAL AUTHORITY**

2.1 The JPA Act authorizes two or more governmental entities, including counties and municipalities, to jointly exercise by agreement any power common to the contracting parties, §11-1-3 NMSA 1978 Comp., subject to any of the restrictions imposed upon the manner of exercising such power of one of the contracting public agencies. § 11-1-5 NMSA 1978 Comp. The common power specified in the agreement is possessed by the "administering agency" (as such term is used in §11-1-5 NMSA 1978 Comp.), which may be one of the parties to the agreement, or may be a commission or board constituted pursuant to the agreement. The Governing Board shall be the "administering agency" as such term is used in the JPA Act.

2.2 Section 3-18-1 NMSA 1978 Comp. grants authority to municipalities to enter into contracts or leases, acquire and hold property, both real and personal, and exercise such other privileges that are incident to companies and corporations of like character or degree that are not inconsistent with the laws of New Mexico.

2.3 Section 4-37-1 NMSA 1978 Comp., grants to counties the same powers that are granted to municipalities except for those powers that are inconsistent with statutory or constitutional limitations placed on counties.

2.4 Under the LED Act the New Mexico State Legislature has determined that it is in the best interest of the state, municipalities and counties to encourage local and regional solutions to economic development and has authorized municipalities and counties to adopt local economic development plans and to enter into joint powers agreements pursuant to Section 5-10-7 NMSA 1978 Comp. to further regional economic development.

2.5 Pursuant to the LED Act, the Members have each adopted local economic development plans that encompass the Venture contemplated by this Agreement.

2.6 Pursuant to the authority of the JPA Act, the LED Act and the LLC Act, the Alliance constitutes a quasi-governmental agency that exercises certain of the powers of, and has certain of the obligations of, the Members.

**ARTICLE III.
ORGANIZATIONAL MATTERS**

3.1. Formation. The Members have formed the Alliance under the LLC Act pursuant to the authority of the Members under the JPA Act, the LED Act and other laws of the State of New Mexico that govern each Member. The rights and liabilities of the Members shall be determined pursuant to the LLC Act, the JPA Act, the LED Act and any other applicable state law, and this Agreement.

3.2. Office and Agent. The Alliance shall continuously maintain an office (which may be a Member's office) and registered agent in the State of New Mexico. The principal office of the Alliance shall be at such location within Eddy or Lea Counties as the Governing Board may determine from time to time. The Alliance may also have such additional offices, within or outside of Eddy and Lea Counties, but within the State of New Mexico, as the Governing Board

may determine from time to time. The registered agent shall be as stated in the Articles of Organization or as otherwise determined by the Governing Board from time to time.

3.3. Addresses and Facsimile Numbers of the Members. The address, electronic mail address, and facsimile number of each Member for notice purposes are set forth on Exhibit A. A Member may change its address, electronic mail address and facsimile number upon notice thereof to all the other Members in accordance with the requirements of Section 10.3.

3.4. Limited Authority. The Alliance shall not take any action that is inconsistent with this Agreement or state law governing the authority of the Members. The Alliance shall not take any action that expands the purpose and scope of the Venture, without the unanimous consent of the Members.

ARTICLE IV MEMBER CONTRIBUTIONS

4.1 Contributions. Pursuant to Section 11-1-4 (B) of the JPA Act, Contributions from the funds of the Members may be made for the purposes set forth herein, including defraying the costs of the Alliance. Subject to Section 4.6, all Contributions shall be equally made by the Members.

4.2 Advances. Advances of funds to or for the benefit of the Alliance made by a Member may be repaid, if at all, upon such terms as determined by the Governing Board.

4.3 Disbursement of Gross Receipts Taxes. To the extent that gross receipts taxes remitted by the State of New Mexico to Lea County are directly attributable to the sales of goods and performance of services related to the Project or other development of the Project Site, those gross receipts taxes shall be transferred by Lea County to the Alliance for distribution to the Members (including Lea County) according to their respective Percentage Interests.

4.4 Industrial Revenue Bonds, Disbursement of "PILOTS". The Members acknowledge that (i) Lea County may issue industrial revenue bonds ("IRBs"), resulting in part or all of the Project being exempt from property taxation, as an inducement to the Venture Party to undertake the Project, (ii) as part of any such IRB transaction, the Venture Party will convey Project property to Lea County, and Lea County will lease and sell such Project property to the Venture Party under a lease and sale agreement (the "IRB Lease"), and (iii) as a condition to the issuance of IRBs, Lea County may require a provision in the IRB Lease under which the Venture Party is obligated to pay payments in lieu of exempt taxes ("PILOTS"). Under the IRB Lease, all PILOTS shall be paid by the Venture Party directly, and solely, to Lea County. Each PILOT received by Lea County shall be shared with the other Members in proportion to their Percentage Interests. Each Member may expend its share of the PILOT for any legal purpose, including distributing some or all of the share to other governmental units.

4.5 Distribution of Revenues. From time to time the Governing Board may distribute to the Members, in proportion to their Percentage Interests, excess revenues that are not needed for payment of the Alliance's expenses and costs related to the Project.

4.6 Adjustment of Percentage Interest in Event of Failure of Member to Make Required Contribution. If one or more of the Members fail to make all or any portion of any financial Contribution in accordance with the requirements of this Agreement, then the Percentage Interest of each Member that has made the required Contribution shall be increased, and the Percentage Interest of each Member that has failed to make such a required Contribution shall be decreased, to be proportional to each Member's total cumulative Contributions, without regard to any payment by the Alliance to the Members. (For example: Assume that all of the Members have made Contributions of \$25,000 to the Alliance. The Percentage Interest of each Member is 25%. Members A, B and C make required additional Contributions of \$15,000 when due (at Time X), but Member D does not. At Time X, the Percentage Interests of Members A, B and C will each be \$40,000/\$145,000, or 27.586%, and the Percentage Interest of Member D will be \$25,000/\$145,000, or 17.242%.) Any deficiency of a Member in making Contributions may not be cured (with a corresponding adjustment in Percentage Interests) except with the written consent of all of the remaining Members.

4.7 Disposal of Property. Upon dissolution of the Alliance, any Alliance property shall be disposed of according to law, with surplus funds or other property divided among the Members according to their respective Percentage Interests. Notwithstanding anything to the contrary in this Agreement, if the Project Site has been leased to, or transferred and then reacquired from, a third party, or if any radioactive or other hazardous materials have been stored on the Project Site for any period of time, then the Project Site shall not be transferred to any of the Members unless thorough technical and legal investigations, evidenced by written reports, confirm that contamination of the Project Site will not present a material risk of liability to the Members.

4.8 Return of Financial Contributions. No Member shall be entitled to withdraw from the Alliance, or demand the return of any part of its Contributions except as and to the extent specifically provided in this Agreement.

4.9 Annual Budget. The Governing Board shall, not later than March 1 of each calendar year adopt a budget for the next Fiscal Year (the "Annual Budget"), including a budget for Contributions, if any. The Annual Budget shall include the operating costs of the Alliance. In the event there are insufficient funds on hand to cover such operating costs, the costs shall be allocated to each Member pro rata and shall be paid by such Member on the dates specified in the Annual Budget.

4.10 Debt Limitation. No Member's obligation to make a Contribution shall constitute a debt payable from a levy of property taxes, and no Member shall be required to pledge its full faith and credit to the payment of any Contribution.

ARTICLE V MEMBERS

5.1 Initial Members. The initial Members shall be the County of Eddy, the County of Lea, the City of Carlsbad, and the City of Hobbs, each of which shall initially have a 25% Percentage Interest.

5.2 Admission of Additional Members. The Members may, from time to time and at any time, admit to the Alliance additional Members, upon terms and conditions unanimously approved by vote of both the Governing Board and the Members.

5.3 Limited Liability.

5.3.1. Except for the obligation to make Contributions approved pursuant to this Agreement, no Member shall be liable for any debt, obligation, or liability of the Alliance, and no Member shall be obligated for any such debt, obligation or liability of the Alliance solely by reason of being a Member. Except as otherwise expressly provided by law or as expressly agreed by a Member in writing, no Member shall be liable, responsible or accountable in damages or otherwise to the Alliance or any other Member for any action taken or failure to act on behalf of the Alliance, unless such act or omission by such Member constitutes intentional misconduct or a knowing violation of law.

5.3.2. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, which apply to the activity of officers, agents or employees of any signatory public agency when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of the JPA Act and this Agreement.

5.4 Withdrawal of Member.

5.4.1. Any Member may withdraw from this Agreement by giving 30 days prior written notice to the other parties to this Agreement.

5.4.2. The withdrawal of any one Member to this Agreement shall not terminate this Agreement. The withdrawing Member waives any and all rights to property, funds, or any other rights under this Agreement. The withdrawing Member forfeits its Membership Interest, which shall be distributed (i) to the other Member located within the same county, or if such other Member does not wish to accept all of the withdrawing Member's membership interest, then (ii) to the remaining Members in proportion to each remaining Member's Percentage Interest.

5.4.3. This Agreement may be terminated at any time by an affirmative vote of Members representing a Majority Interest.

5.4.4. Any withdrawal or termination of the Agreement by a Member shall not affect any liabilities, obligations, financial or otherwise, incurred by such Member under this Agreement prior to the notice of withdrawal, other than an obligation to make a Contribution that the Member had not made.

**ARTICLE VI
MANAGEMENT AND CONTROL**

6.1. Management and Powers.

6.1.1 The Governing Board shall be the "administering agency", as such term is used in the JPA Act.

6.1.2 The Members, acting in concert under this Agreement, shall comprise a "regional government", as such term is used in Section 5-10-7(A) of the LED Act, and the Governing Board shall be a "regional body" as that term is used in Section 5-10-7(C) of the LED Act.

6.1.3 A Member may vote, or consent to a matter concerning the Alliance, only through the action of the Member's governing body.

6.2. Governing Board: Appointment, Voting, Meetings.

6.2.1. Except for powers specifically reserved to the Members by law, in the Articles of Organization or elsewhere in this Agreement, all powers of the Alliance shall be exercised by or under the authority of, and the business and affairs of the Alliance shall be managed under the direction of, the Governing Board. Nevertheless, the Alliance shall be a member-managed limited liability company, and the Governing Board shall not be a "manager", as such term is used in the LLC Act.

6.2.2. Each Member shall designate in writing two Directors, at least one of whom shall be an elected official of the Member. Any Member may replace either or both of its Directors at any time, for any reason or no reason, effective upon notice to all the other Members and the Chairperson.

6.2.3. The Directors representing a Member shall have, jointly, a vote equal to that Member's Percentage Interest. If only one Director representing a Member is in attendance, that Director (whether the Primary Director or the Secondary Director) shall have power to vote the Member's full Percentage Interest. If both Directors representing a Member are in attendance, they shall consult concerning the vote, but whether they agree or not, the Primary Director alone shall vote the Member's full Percentage Interest.

6.3. Liability of Directors. Each Director shall carry out his or her duties in good faith, in a manner that is in the best interest of the Members, and with such care as an ordinarily prudent director in a like position would use under the circumstances.

6.4. Meetings of Governing Board.

6.4.1. Date, Time and Place of Meetings of Governing Board: Secretary. Meetings of the Governing Board shall be held at a place within Lea County or Eddy County as determined by the Chairperson. No annual or regular meetings of Members or Directors are required. The Chairperson, or, in his or her absence, the Vice-Chairperson, shall preside at each meeting of the Governing Board. If neither the Chairperson nor the Vice-Chairperson is present, the Directors shall elect a temporary Chairperson only for the purposes of the meeting. The Secretary (or, in the absence of the Secretary, a Person in attendance designated by the Governing Board, who may but need not be a Director or Officer) shall prepare minutes of such meetings, which shall be placed in the minute books of the Alliance, all in compliance with Section 10-15-1 of the Open Meetings Act.

6.4.2. Power to Call Meetings. Meetings of the Governing Board may be called by the Chairperson, and shall be called upon the written request of any two Directors.

6.4.3. Notice of Meeting. Written notice of a meeting of the Governing Board (other than an "emergency meeting", if any, within the meaning of the Open Meetings Act) shall be sent or otherwise given to each Director not less than 72 hours before the time of the meeting. The notice shall specify the place, date and hour of the meeting and include a draft agenda. A final agenda shall be delivered to each Director not less than 36 hours before the time of the meeting.

6.4.4. Open Meetings and Manner of Giving Notice. Conduct and notice of any meeting of the Governing Board shall be in compliance with the Open Meetings Act and any applicable requirements of the New Mexico Public Records Act, §§ 14-3-1 to 14-3-25 NMSA 1978 Comp. Except for emergency meetings, notice of a meeting, and a draft agenda, shall be posted at least 72 hours prior to the time of the meeting, with a final agenda being posted not less than 36 hours prior to the meeting. Except for emergency meetings, the Governing Board shall take action only on items appearing on the agenda.

6.4.5. Quorum. A meeting of the Governing Board shall have a quorum when either (i) more than half of the individual Directors are present, or (ii) Directors representing a Majority Interest are present.

6.4.6. Governing Board Action. Except for those matters for which this Agreement specifies that a unanimous vote is required, all actions of the Governing Board shall be by a Majority Vote.

6.5. Officers.

6.5.1 Appointment of Officers. The Governing Board shall elect Officers, who shall have the authority to manage affairs of the Alliance on a day-to-day basis, subject to the approval and control of the Governing Board. The Governing Board may appoint Officers at any time, and, subject to Section 6.5.2, each Officer shall serve for one year, or such shorter time as the Governing Board specifies at the time of the appointment. The Officers shall include a Chairperson, Vice-Chairperson, Secretary and Treasurer who each shall be elected from among the Directors. The Officers shall exercise such powers and perform such duties as specified in this Agreement and as shall be determined from time to time by the Governing Board. The Officers shall not be compensated for their service as Officers, except to the extent that expenses related to travel, including per diem costs, are approved in advance by the Governing Board.

6.5.2 Removal, Resignation and Filling of Vacancy of Officers.

6.5.2.1. Any Officer may be removed, with or without cause, by the Governing Board at any time. Any such action shall have no effect on the status of a Member's representative on the Governing Board.

6.5.2.2. Any Officer may resign at any time by giving written notice to all of the Directors. Any resignation shall be effective upon delivery, or at any later time specified in such notice. Unless otherwise specified in such notice, the acceptance of the resignation shall not be necessary to make it effective.

6.5.2.3. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for regular appointments to such office.

6.5.3 Duties and Powers of the Chairperson. The Chairperson shall preside at meetings of the Governing Board, and exercise and perform such other powers and duties as may be from time to time assigned to him or her by the Governing Board or prescribed by this Agreement.

6.5.4 Duties and Powers of the Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the Chairperson's absence.

6.5.5 Duties and Powers of Secretary.

6.5.5.1. The Secretary shall record the proceedings of the meetings in a minute book to be kept for that purpose. The Secretary shall give, or cause to be given, notice of all meetings of the Governing Board and shall perform such other duties as may be prescribed by the Governing Board.

6.5.5.2. The Secretary shall keep, or cause to be kept all documents as may be required under New Mexico law, including the Open Meetings Act. The Secretary shall perform such other duties and have such other authority as may be prescribed elsewhere in this Agreement or from time to time by the Governing Board.

6.5.6 Duties and Powers of the Treasurer.

6.5.6.1. The Treasurer shall be the chief financial and accounting officer and treasurer of the Alliance. The Treasurer shall be the principal contact between the Governing Board and the Fiscal Agent concerning the financial matters of the Alliance.

6.5.6.2. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and transactions of the Alliance, including accounts of its assets, liabilities, receipts, and disbursements. The books of account shall at all reasonable times be open to inspection by any Member.

6.5.7 Liability of Officers. Each Officer shall carry out their duties in good faith, in a manner that is in the best interest of the Members, and with such care as ordinarily prudent officer in a like position would use under the circumstances.

6.6. Limitations on Authority of Members, Governing Board and Officers.

6.6.1. Notwithstanding any other provision of this Agreement, no Officer or Director shall have the authority to cause the Alliance to incur any liability, or to execute on behalf of the Alliance any contract, agreement, document, instrument, note, deed, mortgage, deed of trust, or other agreement or instrument of conveyance or indebtedness (or series of any such agreements or instruments) except as otherwise approved by the

Governing Board. The Governing Board shall approve all contracts, and all contracts shall be signed by both the Chairperson or the Vice-Chairperson, and the Secretary or the Treasurer. The Governing Board shall not incur or approve any debt except with the unanimous consent of all the Members.

6.6.2. As provided in §11-1-4 NMSA 1978 Comp., the Members, Governing Board, Directors and Officers shall be strictly accountable for all receipts and disbursements, and shall maintain adequate, complete and correct records and statements pertaining to receipts, disbursements, and other financial matters pertaining to the Alliance and the Venture.

6.6.3. Notwithstanding any other provision of this Agreement, and in addition to the provisions of Section 6.4.4. of this Agreement, the Members, Governing Board, and Officers shall comply with:

- (a) All laws applicable to public funds under the laws of the State of New Mexico.
- (b) The Procurement Code.
- (c) The JPA Act.
- (d) The LED Act.

6.6.4. In the event the Alliance chooses to provide aid to a qualifying entity under the LED Act, the Governing Board shall comply with the provisions of the ordinances enacted by each Member under the LED Act.

6.6.5. In the event of any inconsistency between New Mexico law and this Agreement, the terms of New Mexico law shall prevail.

ARTICLE VII RECORDS; REPORTING TO MEMBERS

7.1. Books and Records.

7.1.1. The books and records of the Alliance shall be kept in accordance with the accounting methods required for municipalities and counties under New Mexico law.

7.1.2. The books and records of the Alliance shall be open to inspection in accordance with the requirements of New Mexico law.

7.2. Reports. The Governing Board shall prepare and present such reports as may be required by law, regulation or contract to any governmental agency, and shall also render to the Members such reports and accounting as the parties hereto may reasonably request.

ARTICLE VIII DISSOLUTION AND WINDING UP

8.1. Conditions of Dissolution. The Alliance shall dissolve upon the occurrence of any of the following events:

- 8.1.1. The approval of all of the Members;
 - 8.1.2. At any time when there are no Members; or
 - 8.1.3. The entry of a decree of judicial dissolution under the LLC Act.
- 8.2. Winding Up. Upon the dissolution of the Alliance, the Alliance's assets shall be disposed of and its affairs wound up. The Alliance shall give written notice of the commencement of the dissolution to all of its known creditors.
- 8.3. Order of Payment of Liabilities Upon Dissolution. After determining that all the known debts and liabilities of the Alliance have been paid or adequately provided for, the remaining assets shall be distributed to the Members in proportion to their Percentage Interests.

ARTICLE IX INDEMNIFICATION AND INSURANCE

- 9.1. Liability. No Member shall be responsible for liability incurred as a result of one of the other Member's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement shall be subject to the privileges and immunities of the Tort Claims Act.
- 9.2. Third Party Beneficiary. The Members do not and do not intend to create in the public, any member thereof, or any person, any rights whatsoever such as, but not limited to, the rights of a third-party beneficiary, or to authorize anyone not a party to this Agreement to maintain any suit for any claim whatsoever pursuant to the provisions of this Agreement.
- 9.3. Insurance. The Governing Board shall obtain and carry public liability insurance coverage (including directors and officers coverage) consistent with the responsibilities of the Directors, Officers and any Alliance employees as "public employees", as such term is used under the Tort Claims Act, and with combined single limits of no less than \$1,050,000. The expense of obtaining and maintaining the required insurance shall be included in the Annual Budget. The insurance shall be maintained in full force and effect throughout the duration of this Agreement. A copy of any insurance policy shall be provided to any Member at the Member's request.
- 9.4. Amendment, Repeal or Modification. Any amendment, repeal or modification of any provision of this Article IX shall not adversely affect any right or protection of a Director, Officer, or employee of the Alliance existing at the time of such amendment, repeal or modification.

ARTICLE X MISCELLANEOUS

- 10.1. Amendments. All amendments to this Agreement must be in writing, signed by all Members, and approved by DFA. In the absence of any opinion of counsel as to the effect thereof, no amendment to this Agreement or the Articles shall be made which violates the law or is likely to cause the Alliance to be taxed as a corporation.

10.2. Waiver of Partition. Each of the Members irrevocably waives any right to maintain any action for partition with respect to property of the Alliance.

10.3. Notices. Except as otherwise expressly provided in this Agreement, any notice required or permitted to be given under or pursuant to this Agreement shall be in writing and shall be delivered to the intended recipient party either (a) in person, (b) by nationally recognized overnight delivery service, (c) by facsimile equipment providing written confirmation of successful transmission, (d) by United States Certified Mail, return receipt requested, or (e) by electronic mail (with confirmation of receipt by the intended recipient). Notices delivered in person or sent by facsimile, electronic mail, or overnight delivery service shall be effective upon delivery. Notices sent by Certified Mail shall be effective on the date shown on the return receipt as the date of delivery or on the final date on which the Postal Service certifies that it was unable to deliver. Notices to any Member shall be sent to the address, facsimile number, or electronic mail address of such Member on file with the Secretary. Any Member may change the address or facsimile number to which notices should be sent by giving notice of such change to all the other Members and the Secretary.

10.4. Further Acts. Each Member agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform each and all of the terms, provisions, and conditions of this Agreement and the transactions contemplated hereby.

10.5. Complete Agreement. This Agreement and the Articles of Organization constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the Members or any of them. No representation, statement, condition or warranty not contained in this Agreement or the Articles will be binding on the Members or have any force or effect whatsoever.

10.6. Rules of Construction; Statutory References. Whenever in this Agreement the context so suggests, references to the masculine shall include the feminine, references to the singular shall include the plural, and references to "or" shall mean "and/or". Any reference to statutes or regulations will include all amendments, modifications, or replacements of the specific sections and provisions concerned.

10.7. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

10.8. Interpretation. No provision of this Agreement shall be construed in favor of or against any of the parties hereto by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which such provision or any other provision or provisions of this Agreement is or are inconsistent with any prior draft thereof.

10.9. Exhibits. All exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

10.10. Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby; provided, however, that if the invalid provision or application thereof destroys an essential purpose of this Agreement, such provision shall be deemed modified to the extent necessary to make it valid and enforceable.

10.11. Reliance on Authority of Person Signing Agreement. Neither the Alliance nor any Member will be required to determine the authority of any individual signing this Agreement on behalf of any Member to make any commitment or undertaking on behalf of such entity or to determine any fact or circumstance bearing upon the existence of the authority of such individual.

10.12. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico (regardless of the laws that might otherwise govern under applicable principles of conflicts of law of such state).

10.14. Effective Date. This Agreement shall be effective on the date it is approved by the DFA pursuant to the JPA Act (the "Effective Date").

SIGNATURES APPEAR ON FOLLOWING PAGES.

[SIGNATURE PAGE FOR LEA COUNTY]



Lea County Commission

By: *Greg Fisher*

Chairman


ATTEST: *Pat Chappelle*
Lea County Clerk

By: *Kelli Williams*
Deputy

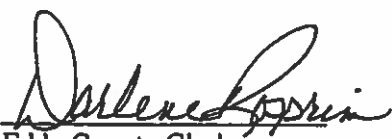


[SIGNATURE PAGE FOR EDDY COUNTY]

Eddy County Commission

By: 

Jack Volpatc
Chairman


ATTEST: 

Eddy County Clerk

By: _____

[SIGNATURE PAGE FOR CITY OF HOBBS]

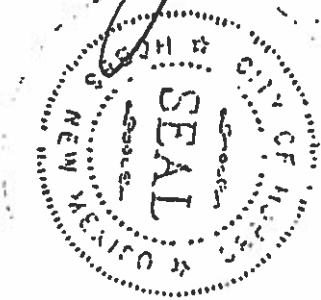
City of Hobbs

By: 

Mayor


ATTEST: JAN FLETCHER
City Clerk


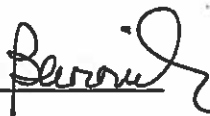
By: 



[SIGNATURE PAGE FOR CITY OF CARLSBAD]

City of Carlsbad

By: 
Mayor

 ATTEST:

Clerk
By: _____

NEW MEXICO FINANCE AND
ADMINISTRATION DEPARTMENT

By: Monica Afford 5/6/14

EXHIBIT A

**MEMBERS' INTERESTS
(as of the Effective Date)**

City of Carlsbad: 25%
City of Hobbs: 25%
Eddy County: 25%
Lea County: 25%

MEMBERS' ADDRESSES

City of Carlsbad: City Administrator
City Hall
101 N. Halagueno
Carlsbad, New Mexico 88221
(575) 887-1191

City of Hobbs: City Manager
City Hall
200 E. Broadway
Hobbs, New Mexico 88240
(575) 397-9200

Eddy County: County Manager
Eddy County Administration Complex Suite 110
101 W. Greene Street
Carlsbad, New Mexico 88220
(575) 887-9511

Lea County: County Manager
100 N. Main
Lovington, NM 88260
(575) 396-2093

EXHIBIT B

PROJECT SITE

TRACT I: A tract of land located in the Southwest Quarter of Section 17, Township 20 South, Range 33 East, N.M.P.M. and more particularly described as beginning at the Southwest corner of said Section 17, thence S89°59'E, 1322.50 feet; thence N0°3'S, 1320 feet; thence N89°59'W, 1322.50 feet; and thence S0°3'E, 1320 feet to the point of beginning; and

TRACT II: Lots 2, 3 and 4; the East Half of the West Half (E 1/2 W 1/2); and the South Half of the Southeast Quarter (S 1/2 SE 1/4), all in Section 18, Township 20 South, Range 33 East, N.M.P.M.